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Trustee of NRZ Pass-Through Trust VI and
Mortgage Electronic Registration Systems, Inc.*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE**

JAN M. RENFROE,

Case No.: 2:17-cv-00194-SMJ

Plaintiff,

V.

QUALITY LOAN SERVICE CORP. OF WASHINGTON *et al.*,

**CITIBANK, N.A., AS
TRUSTEE OF NRZ PASS-
THROUGH TRUST VI'S
REPLY SUPPORTING
MOTION FOR SUMMARY
JUDGMENT [ECF NO. 122]**

Defendants.

Defendant Citibank, N.A., as trustee of NRZ Pass-Through Trust VI replies supporting its motion for summary judgment, ECF No. 122.

I. INTRODUCTION

There is only one claim left following the Ninth Circuit's remand: Ms. Renfroe's statute of limitations-based quiet title claim. Ms. Renfroe's opposition largely ignores that fact, instead raising arguments that have no

**CITIBANK, N.A. AS TRUSTEE OF NRZ - 1
PASS-THROUGH TRUST V/s REPLY SUPPORTING
MOTION FOR SUMMARY JUDGMENT
NO. 2:17-CV-00194-SMJ**

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1 bearing on whether Citibank timely initiated foreclosure. The undisputed
2 evidence shows Ms. Renfroe's oldest outstanding monthly loan payment had
3 not expired when Citibank recorded its notice of sale and the six-year statute of
4 limitations has not run on the full debt. This is all the court must find to reject
5 Ms. Renfroe's statute of limitations argument. The court should grant Citibank
6 summary judgment, and decline to consider Ms. Renfroe's irrelevant arguments.

7 **II. REPLY STATEMENT OF MATERIAL FACTS NOT IN DISPUTE**

8 Ms. Renfroe did not file a statement of disputed material facts as the local
9 rules require. Citibank nevertheless replies to her disputed facts, ECF No. 131
10 at 3, in its reply statement of material facts filed herewith.

11 **III. ARGUMENT**

12 **A. Ms. Renfroe's accounting disputes are immaterial**

13 Ms. Renfroe has one remaining claim: a quiet title claim alleging the
14 statute of limitations expired. (ECF No. 100 at 6.) To prevail, she needs to
15 show it is too late for Citibank to foreclose. *See* RCW 7.28.300; *see also* *Bly v.*
16 *Field Asset Servs.*, No. C14-025-JLR, 2014 WL 2452755, at *3 (W.D. Wash.
17 June 2, 2014) ("The dispositive issue . . . under RCW 7.28.300 is whether the
18 six-year statute of limitations . . . has run on [the lender's] ability to bring a
19 foreclosure action.") Her disputes as to Citibank's accounting, given she has not

1 paid the loan in full, *see e.g.*, ECF No. 132 at ¶5, are immaterial to whether the
2 statute of limitations expired and cannot preclude summary judgment. *Lynn v.*
3 *Sheet Metal Workers' Int'l Ass'n*, 804 F.2d 1472, 1483 (9th Cir. 1986) ("a
4 dispute as to an immaterial fact does not preclude summary judgment"); *see*
5 *also Evans v. BAC Home Loans Servicing, LP*, No. 10C-0656-RSM, 2010 WL
6 5138394, at *3 (W.D. Wash. Dec. 10, 2010) ("Plaintiffs cannot assert an action
7 to quiet title against a [] lender without demonstrating they have satisfied their
8 obligations under the Deed of Trust.")

9 *Laxmi Jewel* does not support Ms. Renfroe's position the amount due is a
10 material fact issue. (ECF No. 131 at 6.) The court did not address a quiet title
11 claim or the argument the statute of limitations expired. There, the Laxmi
12 Group filed an involuntary bankruptcy petition against C&C California. *In re.*
13 *C&C Jewelry Mfg., Inc. (Laxmi Jewel)*, Nos. CC-08-1190-HMoMk, CC-08-
14 1267-MHoMk, LA 07-20764 SB, 2001 WL 36340326, at *1 (9th Cir. B.A.P.
15 2009). C&C moved for summary judgment, arguing its liabilities were subject
16 to a *bona fide* dispute.¹ *Id.* at *2. The bankruptcy court granted C&C summary

17 ¹ If there is a genuine fact issue bearing upon the debtor's liability or the amount
18 of the claim, the bankruptcy code mandates dismissal. *Laxmi Jewel*, 2001 WL
19 36340326, at *8.

1 judgment. *Id.* The appellate panel then affirmed, commenting Laxmi's
2 evidence, including an accounts receivable table and aging report, did not
3 demonstrate an "accurate debt amount still outstanding as of the Petition Date."
4 *Id.* at *9, *15. *Laxmi Jewel*—a case involving an involuntary bankruptcy,
5 where the court was tasked with deciding whether a debtor's obligations were
6 subject to a *bona fide* dispute such that the debtor should not remain in
7 bankruptcy—has no application to this case.

8 **B. Even if Ms. Renfroe "last paid . . . for [the] payment that came due
9 on December 1, 2010"—Citibank is entitled to summary judgment**

10 Ms. Renfroe declares she "made [her] last installment payment" on April
11 5, 2011 "for a payment that came due on December 1, 2010." (ECF No. 132 at
12 2.) But even if the court agrees with her—and overlooks her inconsistent
13 statement, ECF No. 131 at 7:5-6, she "remained current up to May 1, 2011"—
14 she cannot prove the statute of limitations expired.

15 When loan payments on a loan are due in installments, each installment
16 is subject to its own statute of limitations beginning on the date the payment is
17 due. *Holman v. Wells Fargo Home Mortg., Inc.*, No. 2:20-cv-116-RMP, 2020
18 WL 4208931, at *5 (E.D. Wash. July 22, 2020) (citations omitted); *see also*
19 *Merceri v. Bank of N.Y. Mellon*, 4 Wn. App. 2d 755, 759-60, 434 P.3d 84, 87

1 (2018). "But if an obligation that is to be paid in installments is accelerated, the
2 entire remaining balance becomes due and the statute of limitations becomes
3 triggered for all installments." *Merceri*, 4 Wn. App. at 759-60, 434 P.3d at 87.
4 And pursuant to Washington precedent, "[t]he commencement of a nonjudicial
5 foreclosure proceeding tolls the six-year statute of limitations period." *Cedar*
6 *West Owners Ass'n v. Nationstar Mortg. LLC*, 7 Wn. App. 2d 473, 489-90, 434
7 P.3d 554, 562 (2019). "Generally, the notice of trustee sale tolls the limitation
8 period until the date scheduled for the foreclosure sale or 120 days later, the last
9 day to which it could have been continued." *Holman*, 2020 WL 4208931, at *5.

10 If Ms. Renfroe last paid the "payment that came due on December 1,
11 2010," her first missed monthly payment was due January 1, 2011.² Citibank
12 initiated foreclosure through recording its notice of trustee's sale on December
13 23, 2016—less than six years later. (ECF No. 123 at 4 ¶14 and Ex. 9.) The
14 notice set a April 28, 2017 sale date. (See *id.* at Ex. 9 at CITI000033.) The sale

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16 ² Ms. Renfroe argues "The six-year limitation period began to accrue from
17 December 1, 2010." (ECF No. 131 at 5.) But if Ms. Renfroe made her last
18 payment for the payment "that came due on December 1, 2010," her first
19 missed monthly payment would be due the following month.

1 was then continued until June 30, 2017 (and the statute of limitations period
2 would have been tolled until that date, *see Holman*, 2020 WL 4208931, at *5),
3 but the state court ordered the sale "may not proceed if at all, until further order
4 of this court" before it could occur, ECF No. 13-1, extending the tolling period.
5 *See RCW 4.16.230*. And Ms. Renfroe contends the state court injunction order
6 remains in effect to this day. (*See* ECF No. 131 at 3:11-15; *see also* Declaration
7 of Taylor T. Haywood (**Haywood Decl.**), ¶3 at Ex. 1.) So even if the court
8 accepts Ms. Renfroe's claim she last paid "the installment that came due on
9 December 1, 2010" as true, she cannot quiet title. Citibank undisputedly
10 initiated foreclosure within six years of the first missed installment, and the
11 limitations period has been tolled since then.

12 **C. *Merceri* and *Cedar West* confirm the court should grant Citibank
13 summary judgment**

14 *Merceri*—a case the Ninth Circuit instructed this court to consider on
15 remand—confirms Ms. Renfroe's argument the statute of limitations expired is
16 meritless. The facts in *Merceri* are similar: Ms. Merceri obtained an
17 installment loan in 2006 with a 2046 maturity date. *Merceri*, 4 Wn. App. at
18 757, 434 P.3d at 86. She defaulted in 2010. *Id.* Based on the failure to make
19 monthly payments, her lender served a notice of default and intent to accelerate
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1 instructing her payments would be accelerated she did not cure by March 18,
2 2010. *Id.* On June 1, 2016, the lender recorded a notice of trustee's sale. *Id.*

3 Ms. Merceri filed a quiet title suit alleging the statute of limitations
4 expired because the six-year statute of limitations began to run on the full debt
5 in 2010, when the cure period expired. *Id.* She won in the trial court but the
6 court of appeals instructed the court "should grant the [lender's] motion for
7 summary judgment on the statute of limitations issue," finding the lender
8 initiated foreclosure within six years of missed monthly installment payments,
9 and no evidence the statute of limitations began to run on the entire loan
10 obligation. *Id.* 762-63, 434 P.3d at 88-89.

11 Here, Ms. Renfroe obtained an installment loan in 2005 with a 2035
12 maturity date. (ECF No. 123 at ¶6 and Ex. 1.) She fell behind in 2009, but
13 continued to periodically remit loan payments, with her last payment applied to
14 the monthly amount due June 1, 2011 (or December 1, 2010, according to Ms.
15 Renfroe). (*Id.* at ¶12 and Ex. 5; ECF No. 132 at 2.) BANA served a notice of
16 default and intent to accelerate dated June 21, 2013, instructing she must pay
17 the past-due amount to avoid a future acceleration. (*Id.* at ¶13 and Ex. 7.) On
18 May 9, 2014, BANA served a notice of default. (*Id.* at ¶14 and Ex. 8.) On
19 December 23, 2016, a notice of trustee's sale was recorded. (*Id.* at Ex. 9.) And

1 as set forth *supra*, the state court enjoined the sale before it could occur. (See
2 ECF No. 13-1.)

3 *Merceri* instructs the six-year limitations period did not begin to run on
4 the full debt until any earlier than May 9, 2014—when Citibank's predecessor
5 recorded its notice of default. *See Merceri*, 4 Wn. App. at 761-62, 434 P.3d at
6 88-89. And, since Citibank also recorded its notice sale within six years of Ms.
7 Renfroe's oldest outstanding installment payment—regardless of whether that
8 payment was due January 1, 2011, according to Ms. Renfroe's theory or July 1,
9 2011, as Nationstar's records reflect—it was entitled to foreclose on all past-due
10 amounts. *See e.g.*, *Cedar West Owners Ass'n v. Nationstar Mortg. LLC*, 7 Wn.
11 App. 2d 473, 489-90, 434 P.3d 554, 562-63 (2019).

12 **D. The notice of default correctly states the amount of the debt**

13 Ms. Renfroe claims the notice of default did not "accurately itemize the
14 amount of the debt" because it states "the last unpaid payment was due on May
15 1, 2014 and the amount in arrears is \$42,606.03." (ECF No. 131 at 6:20-22.)
16 The court should not consider this argument. The Ninth Circuit resolved this
17 issue: "[BANA's] notice of default complied with the statutory requirements."
18 (ECF No. 100 at 3.) And as set forth in section III(A), Ms. Renfroe's
19 accounting disputes are immaterial to her only claim for relief. But of the court
20

1 nevertheless considers her argument, it is incorrect.

2 The notice of default does not incorrectly state the "last unpaid payment
3 was due on May 1, 2014." It is dated May 9, 2014 and states, at that time, Ms.
4 Renfroe owed the monthly installments due from *July 1, 2011* through May 1,
5 2014. (*See* ECF No. 123 at ¶14 and Ex. 8 at CITI000066 (emphasis added.))
6 Nor does it incorrectly state "the amount in arrears is \$42,606.03." (ECF No.
7 131 at 6:22-23.) Nationstar's records reflect Ms. Renfroe last made a payment
8 in 2011, which was applied to the monthly payment amount due June 1, 2011.
9 (ECF No. 123 at 4 ¶13 and Ex. 5.) The notice of default accurately reflects, as
10 May 9, 2014, she owed all monthly payments from July 1, 2011 through May 1,
11 2014, totaling \$42,606.03, and itemizes those monthly amounts in compliance
12 with RCW 61.24.030(8)(d) (requiring a notice of default to include an
13 "itemized account of the amount or amounts in arrears.")

14 **E. The notice of sale does not "pursue time-barred payments"**

15 Ms. Renfroe's claim the notice of sale "attempt[s] to pursue time-barred
16 payments that were not even due" is irrelevant to whether she is entitled to quiet
17 title to the property. (ECF No. 131 at 8:14-16.) It is also incorrect. The notice
18 of sale identified the arrearage as \$85,091.80 as of December 21, 2016.

1 (Haywood Decl. ¶4 and Ex. 2.³) And Citibank itemized that figure for Ms.
2 Renfroe discovery, confirming it includes past due payments beginning July 1,
3 2011—all within the six-year limitations period. (*Id.* at ¶5 and Ex. 3 at 4:5-24.)

4 **F. Ms. Renfroe's remaining arguments are irrelevant**

5 The remainder of Ms. Renfroe's opposition protests BANA misapplied
6 her trial plan payments, Citibank cashed a hazard insurance check over her
7 objection, her "lender locked her out of the online payment portal," and that the
8 court should strike the "statutory notices as invalid." (ECF No. 131 at 10-13.)
9 None of these arguments have any bearing on the only issue left in this case:
10 whether Ms. Renfroe can prevail on her statute of limitations-based quiet title
11 claim. The court should not consider them.

12 **VI. CONCLUSION**

13 There is no genuine material fact issue for trial. The court should grant
14 Citibank summary judgment on Ms. Renfroe's quiet title claim.

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18 ³ The copy of the notice of sale in the record omits the middle two pages.
19 (ECF No. 123 at 91-92.) Citibank provides a complete copy.

1 DATED: September 23, 2020.

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16 Mortgage Electronic Registration Systems, Inc.*

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CITIBANK, N.A. AS TRUSTEE OF NRZ - 11
21 PASS-THROUGH TRUST VTS REPLY SUPPORTING
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CERTIFICATE OF SERVICE

I hereby certify that on 23rd day of September, 2020:

1. I caused to be electronically filed the foregoing **CITIBANK, N.A. AS TRUSTEE OF NRZ PASS-THROUGH TRUST VI'S REPLY SUPPORTING MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Robert William McDonald
rmcdonald@qualityloan.com

Robert K. Hunter, Jr.
robert@hunter4law.com

2. I hereby certify that I have mailed by United States Postal Service the foregoing document to the following non-CM/ECF participants at the address listed below: **None**.

3. I hereby certify that I have mailed by United States Postal Service the document to the following CM/ECF participants at the address listed below: **None**.

4. I hereby certify that I have hand-delivered the document to the following participants at the addresses listed below: **None**.

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